IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 15599 of 2004

Between:

National Academy of Agricultural Research Management rep.by its Director Dr.R.K.Samanta, S/o.Shri G.Samanta
R/o.H.No.1-11-12, Bhavani Colony, Rajendranagar, Hyderabad.

..... PETITIONER

AND

1 The Commissioner, Employees provident Fund Organisation, Barkatpura, Hyderabad.
2 The Asst.P.F.Commissioner (ENF), office of the Regional Provident Fund Commissioner, A.P., Barakatpura, Hyderabad.
3 The Appellate Authority, Employees Provident Fund, New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue preferably a writ in the nature of mandamus or any appropriate writ declaring the show cause Notice dated
10-8-2004 issued by respondent No.2 as illegal, arbitrary, and unconstitutional or pass.

Counsel for the Petitioner: MR.A.RAJASHEKAR REDDY (SC FOR CG)

Counsel for the Respondents: MR.R.N.REDDY, Standing Counsel for Provident Fund.

The Court at the stage of admission made the following ORDER:

Heard both the learned Counsel.

By the impugned show-cause notice dated 10.08.2004, the petitioner was called upon to submit the monthly returns i.e., Forms 5, 10 and 12/12-A (Revised) under paras 36 and 38(2) of the Employees Provident Fund Scheme, 1952 (for short 'the Scheme') for the period from 1982-'83 to 1991-'92 and to sent the contribution cards in Form No.3/3-A revised together with a statement in form 6/6-A revised as required under para 43 of the Scheme for the above said period.

The case of the petitioner is that it engaged casual labourers in order to achieve its activities and that it received a communication dated 21-03-2001 from the second respondent-Assistant Provident Fund Commissioner (Enforcement Circle-I) for implementation of provident fund scheme to the casual workers with effect from 01-03-1982 and also received summons on 10-05-2001 directing to appear before it. Then, the petitioner sought adjournment of three months for preparation of calculations. In the meanwhile, the second respondent issued an order dated 03-08-2001, wherein it was stated that as none was appeared when the enquiry was conducted on 28-06-2001, an exparte order dated 03-08-2001 was passed directing the petitioner to pay an amount of Rs.7,82,808/- within ten days from the date of receipt of the said order. Since no opportunity was given, the petitioner prepared a calculation memo explaining the liability of payment of

Rs.2,52,547/- towards the Employee Provident Fund Contribution for the period from July 1984 to April 1992 in respect of the said casual workers and deposited the said amount, and to that extent communication was sent to the second respondent. And the second respondent had forcibly withdrew the balance of Rs.5,30,261/- from the Central Bank of India of Petitioner's Branch through prohibitory order dated 13.09.2001 without considering the calculation submitted by the petitioner. Against the *ex parte* order dated 03.08.2001, the petitioner filed a petition on 06.11.2003 under Section 7(4) of the Employees Provident Fund Act, 1952 seeking to set aside the same, but the same was dismissed and the petitioner filed an appeal before the third respondent-Employees Provident Fund Appellate Tribunal, New Delhi in appeal no. ATA/66(1) 2002 and the same is pending. While so, the first respondent through proceedings dated 17-05-2004, informed the petitioner that it has submitted annual returns for the years from 1982-83 to 1991-92 amounting to Rs.2,52,547/- instead of Rs.7,82,808/- and the petitioner was called upon to submit the revised annual statements i.e., in F.Nos.3-A and 6-A and monthly returns for the years from 1982-'83 to 1991-'92 for the amount of Rs.7,82,808/-. To the same, the petitioner addressed a letter dated 17-06-2004 to the second respondent stating that it had already furnished the annual returns and monthly returns for the period from 1982-'83 to 1991-'92 amounting to Rs.2,52,547/- as per its calculations based on the wages paid to the casual labourers for the said period through letters dated 03-02-2004 and 18-03-2004 and requested the second respondent to provide the details as to how he arrived at Rs.7,82,808/- and also informed about the appeal. But, the second respondent without considering the same issued the impugned show-cause notice. Questioning the same, the petitioner filed the present writ petition.

From the above, it is clear that instead of submitting an explanation to the show-cause notice by giving details of the amounts paid and submission of returns, the petitioner approached this Court by filing the writ petition.

It is well settled that a writ petition against a show-cause notice cannot be entertained unless the authority, which issued the show-cause notice lacks jurisdiction or the said show-cause notice was issued with a malafide intention. In view of the same, I see no ground to entertain the present writ petition and the same is liable to be dismissed.

The writ petition is accordingly dismissed. However, the petitioner is at liberty to submit its explanation bringing to the notice of the respondents about the amount

paid by it and the amount withdrawn by the respondent-organisation through the prohibitory order including that of returns filed, if any. If the said returns are not in the proper form as demanded by the respondents, the petitioner, on verification, can comply with the same after obtaining necessary time from the respondents. No costs.

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A.Gopal Reddy, J

Date: 01.09.2004

ghn/va

To

1 The Commissioner, Employees provident Fund Organisation, Barkatpura, Hyderabad.
2 The Asst.P.F.Commissioner (ENF), office of the Regional Provident Fund Commissioner, A.P., Barakatpura, Hyderabad.
3 The Appellate Authority, Employees Provident Fund, New Delhi.

4 Two CD Copies

by proceedings dated 17.05.2004 issued by the first respondent, the petitioner was informed that he has submitted annual returns for the years from 1982-83 to 1991-92 amounting to Rs.2,52,547/- instead of Rs.7,82,808/- and was called upon to submit the revised annual statements i.e., F.Nos.3-A and 6-A and monthly returns for the years from 1982-'83 to 1992-'93 for the amount received i.e., Rs.7,82,808/-.

Questioning the same, the present writ petition is filed contending that apart

from depositing Rs.2,52,547/-, Employees Provident Fund for the period from July 1984 to April 1992 in respect of the casual workers, was deposited. Apart from the same, the Assistant Commissioner of Provident Fund, second respondent, had forcibly withdrawn a balance of Rs.5,30,261/- from the Central Bank of India, NAARM Branch through prohibitory order dated 13.09.2001.

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